

ASSEMBLY BILL

No. 161

Introduced by Assembly Member Eng

January 19, 2011

An act to amend Section 602 of the Penal Code, relating to trespass.

LEGISLATIVE COUNSEL'S DIGEST

AB 161, as introduced, Eng. Trespass: private property.

Existing law makes it a misdemeanor for any person who has been convicted of a crime committed upon a particular private property, to willfully enter upon, or refuse to leave the private property, as specified, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person. Existing law provides that where the person has been convicted of a violent felony, as specified, this provision shall apply without limitation and where the person has been convicted of any other felony, this provision shall apply for no more than 5 years from the date of conviction. Existing law provides that where the person has been convicted of a misdemeanor, this provision shall apply for no more than 2 years and where the person was convicted for an infraction, as specified, this provision shall apply for no more than one year from the date of conviction.

This bill would additionally subject persons who have had a petition sustained in a juvenile adjudication for a crime committed upon the particular property to the above-referenced provisions. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 602 of the Penal Code is amended to
2 read:

3 602. Except as provided in subdivision (u), subdivision (v),
4 subdivision (x), and Section 602.8, every person who willfully
5 commits a trespass by any of the following acts is guilty of a
6 misdemeanor:

7 (a) Cutting down, destroying, or injuring any kind of wood or
8 timber standing or growing upon the lands of another.

9 (b) Carrying away any kind of wood or timber lying on those
10 lands.

11 (c) Maliciously injuring or severing from the freehold of another
12 anything attached to it, or its produce.

13 (d) Digging, taking, or carrying away from any lot situated
14 within the limits of any incorporated city, without the license of
15 the owner or legal occupant, any earth, soil, or stone.

16 (e) Digging, taking, or carrying away from land in any city or
17 town laid down on the map or plan of the city, or otherwise
18 recognized or established as a street, alley, avenue, or park, without
19 the license of the proper authorities, any earth, soil, or stone.

20 (f) Maliciously tearing down, damaging, mutilating, or
21 destroying any sign, signboard, or notice placed upon, or affixed
22 to, any property belonging to the state, or to any city, county, city
23 and county, town or village, or upon any property of any person,
24 by the state or by an automobile association, which sign, signboard
25 or notice is intended to indicate or designate a road, or a highway,
26 or is intended to direct travelers from one point to another, or
27 relates to fires, fire control, or any other matter involving the
28 protection of the property, or putting up, affixing, fastening,
29 printing, or painting upon any property belonging to the state, or
30 to any city, county, town, or village, or dedicated to the public, or

1 upon any property of any person, without license from the owner,
2 any notice, advertisement, or designation of, or any name for any
3 commodity, whether for sale or otherwise, or any picture, sign, or
4 device intended to call attention to it.

5 (g) Entering upon any lands owned by any other person whereon
6 oysters or other shellfish are planted or growing; or injuring,
7 gathering, or carrying away any oysters or other shellfish planted,
8 growing, or on any of those lands, whether covered by water or
9 not, without the license of the owner or legal occupant; or
10 damaging, destroying, or removing, or causing to be removed,
11 damaged, or destroyed, any stakes, marks, fences, or signs intended
12 to designate the boundaries and limits of any of those lands.

13 (h) (1) Entering upon lands or buildings owned by any other
14 person without the license of the owner or legal occupant, where
15 signs forbidding trespass are displayed, and whereon cattle, goats,
16 pigs, sheep, fowl, or any other animal is being raised, bred, fed,
17 or held for the purpose of food for human consumption; or injuring,
18 gathering, or carrying away any animal being housed on any of
19 those lands, without the license of the owner or legal occupant; or
20 damaging, destroying, or removing, or causing to be removed,
21 damaged, or destroyed, any stakes, marks, fences, or signs intended
22 to designate the boundaries and limits of any of those lands.

23 (2) In order for there to be a violation of this subdivision, the
24 trespass signs under paragraph (1) ~~must~~ *shall* be displayed at
25 intervals not less than three per mile along all exterior boundaries
26 and at all roads and trails entering the land.

27 (3) This subdivision shall not be construed to preclude
28 prosecution or punishment under any other provision of law,
29 including, but not limited to, grand theft or any provision that
30 provides for a greater penalty or longer term of imprisonment.

31 (i) Willfully opening, tearing down, or otherwise destroying
32 any fence on the enclosed land of another, or opening any gate,
33 bar, or fence of another and willfully leaving it open without the
34 written permission of the owner, or maliciously tearing down,
35 mutilating, or destroying any sign, signboard, or other notice
36 forbidding shooting on private property.

37 (j) Building fires upon any lands owned by another where signs
38 forbidding trespass are displayed at intervals not greater than one
39 mile along the exterior boundaries and at all roads and trails
40 entering the lands, without first having obtained written permission

1 from the owner of the lands or the owner's agent, or the person in
2 lawful possession.

3 (k) Entering any lands, whether unenclosed or enclosed by
4 fence, for the purpose of injuring any property or property rights
5 or with the intention of interfering with, obstructing, or injuring
6 any lawful business or occupation carried on by the owner of the
7 land, the owner's agent or by the person in lawful possession.

8 (l) Entering any lands under cultivation or enclosed by fence,
9 belonging to, or occupied by, another, or entering upon uncultivated
10 or unenclosed lands where signs forbidding trespass are displayed
11 at intervals not less than three to the mile along all exterior
12 boundaries and at all roads and trails entering the lands without
13 the written permission of the owner of the land, the owner's agent
14 or of the person in lawful possession, and *any of the following*
15 *apply*:

16 (1) Refusing or failing to leave the lands immediately upon
17 being requested by the owner of the land, the owner's agent or by
18 the person in lawful possession to leave the lands;~~or.~~

19 (2) Tearing down, mutilating, or destroying any sign, signboard,
20 or notice forbidding trespass or hunting on the lands;~~or.~~

21 (3) Removing, injuring, unlocking, or tampering with any lock
22 on any gate on or leading into the lands;~~or.~~

23 (4) Discharging any firearm.

24 (m) Entering and occupying real property or structures of any
25 kind without the consent of the owner, the owner's agent, or the
26 person in lawful possession.

27 (n) Driving any vehicle, as defined in Section 670 of the Vehicle
28 Code, upon real property belonging to, or lawfully occupied by,
29 another and known not to be open to the general public, without
30 the consent of the owner, the owner's agent, or the person in lawful
31 possession. This subdivision shall not apply to any person described
32 in Section 22350 of the Business and Professions Code who is
33 making a lawful service of process, provided that upon exiting the
34 vehicle, the person proceeds immediately to attempt the service
35 of process, and leaves immediately upon completing the service
36 of process or upon the request of the owner, the owner's agent, or
37 the person in lawful possession.

38 (o) Refusing or failing to leave land, real property, or structures
39 belonging to or lawfully occupied by another and not open to the
40 general public, upon being requested to leave by (1) a peace officer

1 at the request of the owner, the owner's agent, or the person in
2 lawful possession, and upon being informed by the peace officer
3 that he or she is acting at the request of the owner, the owner's
4 agent, or the person in lawful possession, or (2) the owner, the
5 owner's agent, or the person in lawful possession. The owner, the
6 owner's agent, or the person in lawful possession shall make a
7 separate request to the peace officer on each occasion when the
8 peace officer's assistance in dealing with a trespass is requested.
9 However, a single request for a peace officer's assistance may be
10 made to cover a limited period of time not to exceed 30 days and
11 identified by specific dates, during which there is a fire hazard or
12 the owner, owner's agent or person in lawful possession is absent
13 from the premises or property. In addition, a single request for a
14 peace officer's assistance may be made for a period not to exceed
15 six months when the premises or property is closed to the public
16 and posted as being closed. However, this subdivision shall not
17 be applicable to persons engaged in lawful labor union activities
18 which are permitted to be carried out on the property by the
19 California Agricultural Labor Relations Act, Part 3.5 (commencing
20 with Section 1140) of Division 2 of the Labor Code, or by the
21 *federal* National Labor Relations Act. For purposes of this section,
22 land, real property, or structures owned or operated by any housing
23 authority for tenants, as defined under Section 34213.5 of the
24 Health and Safety Code, constitutes property not open to the
25 general public; however, this subdivision shall not apply to persons
26 on the premises who are engaging in activities protected by the
27 California or United States Constitution, or to persons who are on
28 the premises at the request of a resident or management and who
29 are not loitering or otherwise suspected of violating or actually
30 violating any law or ordinance.

31 (p) Entering upon any lands declared closed to entry as provided
32 in Section 4256 of the Public Resources Code, if the closed areas
33 shall have been posted with notices declaring the closure, at
34 intervals not greater than one mile along the exterior boundaries
35 or along roads and trails passing through the lands.

36 (q) Refusing or failing to leave a public building of a public
37 agency during those hours of the day or night when the building
38 is regularly closed to the public upon being requested to do so by
39 a regularly employed guard, watchman, or custodian of the public
40 agency owning or maintaining the building or property, if the

1 surrounding circumstances would indicate to a reasonable person
2 that the person has no apparent lawful business to pursue.

3 (r) Knowingly skiing in an area or on a ski trail which is closed
4 to the public and which has signs posted indicating the closure.

5 (s) Refusing or failing to leave a hotel or motel, where he or
6 she has obtained accommodations and has refused to pay for those
7 accommodations, upon request of the proprietor or manager, and
8 the occupancy is exempt, pursuant to subdivision (b) of Section
9 1940 of the Civil Code, from Chapter 2 (commencing with Section
10 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For
11 purposes of this subdivision, occupancy at a hotel or motel for a
12 continuous period of 30 days or less shall, in the absence of a
13 written agreement to the contrary, or other written evidence of a
14 periodic tenancy of indefinite duration, be exempt from Chapter
15 2 (commencing with Section 1940) of Title 5 of Part 4 of Division
16 3 of the Civil Code.

17 (t) (1) Entering upon private property, including contiguous
18 land, real property, or structures thereon belonging to the same
19 owner, whether or not generally open to the public, after having
20 been informed by a peace officer at the request of the owner, the
21 owner's agent, or the person in lawful possession, and upon being
22 informed by the peace officer that he or she is acting at the request
23 of the owner, the owner's agent, or the person in lawful possession,
24 that the property is not open to the particular person; or refusing
25 or failing to leave the property upon being asked to leave the
26 property in the manner provided in this subdivision.

27 (2) This subdivision shall apply only to a person who has been
28 convicted of a crime in a criminal court or who has had a petition
29 sustained in a juvenile adjudication for a crime committed upon
30 the particular private property.

31 (3) A single notification or request to the person as set forth
32 above shall be valid and enforceable under this subdivision unless
33 and until rescinded by the owner, the owner's agent, or the person
34 in lawful possession of the property.

35 (4) Where the person has been convicted of a crime in a criminal court
36 or had a petition sustained in a juvenile adjudication for
37 committing a violent felony, as described in subdivision (c) of
38 Section 667.5, this subdivision shall apply without time limitation.
39 Where the person has been convicted of a crime in a criminal court or had
40 a petition sustained in a juvenile adjudication for committing any

1 other felony, this subdivision shall apply for no more than five
2 years from the date of conviction. Where the person has been
3 convicted ~~of in a criminal court or had a petition sustained in a~~
4 *juvenile adjudication for committing* a misdemeanor, this
5 subdivision shall apply for no more than two years from the date
6 of conviction. Where the person was convicted *in criminal court*
7 *or had a petition sustained in a juvenile adjudication* for an
8 infraction pursuant to Section 490.1, this subdivision shall apply
9 for no more than one year from the date of conviction. This
10 subdivision shall not apply to convictions *or sustained petitions*
11 for any other infraction.

12 (u) (1) Knowingly entering, by an unauthorized person, upon
13 any airport operations area, passenger vessel terminal, or public
14 transit facility if the area has been posted with notices restricting
15 access to authorized personnel only and the postings occur not
16 greater than every 150 feet along the exterior boundary, to the
17 extent, in the case of a passenger vessel terminal, as defined in
18 subparagraph (B) of paragraph (3), that the exterior boundary
19 extends shoreside. To the extent that the exterior boundary of a
20 passenger vessel terminal operations area extends waterside, this
21 prohibition shall apply if notices have been posted in a manner
22 consistent with the requirements for the shoreside exterior
23 boundary, or in any other manner approved by the captain of the
24 port.

25 (2) Any person convicted of a violation of paragraph (1) shall
26 be punished as follows:

27 (A) By a fine not exceeding one hundred dollars (\$100).

28 (B) By imprisonment in a county jail not exceeding six months,
29 or by a fine not exceeding one thousand dollars (\$1,000), or by
30 both that fine and imprisonment, if the person refuses to leave the
31 airport or passenger vessel terminal after being requested to leave
32 by a peace officer or authorized personnel.

33 (C) By imprisonment in a county jail not exceeding six months,
34 or by a fine not exceeding one thousand dollars (\$1,000), or by
35 both that fine and imprisonment, for a second or subsequent
36 offense.

37 (3) As used in this subdivision the following definitions shall
38 control:

39 (A) "Airport operations area" means that part of the airport used
40 by aircraft for landing, taking off, surface maneuvering, loading

1 and unloading, refueling, parking, or maintenance, where aircraft
2 support vehicles and facilities exist, and which is not for public
3 use or public vehicular traffic.

4 (B) “Passenger vessel terminal” means only that portion of a
5 harbor or port facility, as described in Section 105.105(a)(2) of
6 Title 33 of the Code of Federal Regulations, with a secured area
7 that regularly serves scheduled commuter or passenger operations.
8 For the purposes of this section, “passenger vessel terminal” does
9 not include any area designated a public access area pursuant to
10 Section 105.106 of Title 33 of the Code of Federal Regulations.

11 (C) “Public transit facility” has the same meaning as specified
12 in Section 171.7.

13 (D) “Authorized personnel” means any person who has a valid
14 airport identification card issued by the airport operator or has a
15 valid airline identification card recognized by the airport operator,
16 or any person not in possession of an airport or airline identification
17 card who is being escorted for legitimate purposes by a person
18 with an airport or airline identification card. “Authorized
19 personnel” also means any person who has a valid port
20 identification card issued by the harbor operator, or who has a
21 valid company identification card issued by a commercial maritime
22 enterprise recognized by the harbor operator, or any other person
23 who is being escorted for legitimate purposes by a person with a
24 valid port or qualifying company identification card. “Authorized
25 personnel” also means any person who has a valid public transit
26 employee identification.

27 (E) “Airport” means any facility whose function is to support
28 commercial aviation.

29 (v) (1) Except as permitted by federal law, intentionally
30 avoiding submission to the screening and inspection of one’s
31 person and accessible property in accordance with the procedures
32 being applied to control access when entering or reentering a sterile
33 area of an airport, passenger vessel terminal, as defined in Section
34 171.5, or public transit facility, as defined in subdivision (u), if
35 the sterile area is posted with a statement providing reasonable
36 notice that prosecution may result from a trespass described in this
37 subdivision, is a violation of this subdivision, punishable by a fine
38 of not more than five hundred dollars (\$500) for the first offense.
39 A second and subsequent violation is a misdemeanor, punishable
40 by imprisonment in a county jail for a period of not more than one

1 year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.

(2) Notwithstanding paragraph (1), if a first violation of this subdivision is responsible for the evacuation of an airport terminal, passenger vessel terminal, or public transit facility and is responsible in any part for delays or cancellations of scheduled flights or departures, it is punishable by imprisonment of not more than one year in a county jail.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars (\$100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by

1 both that fine and imprisonment, for a second or subsequent
2 offense.

3 (D) If probation is granted or the execution or imposition of
4 sentencing is suspended for any person convicted under this
5 subdivision, it shall be a condition of probation that the person
6 participate in counseling, as designated by the court, unless the
7 court finds good cause not to impose this requirement. The court
8 shall require the person to pay for this counseling, if ordered, unless
9 good cause not to pay is shown.

10 (y) Except as permitted by federal law, intentionally avoiding
11 submission to the screening and inspection of one's person and
12 accessible property in accordance with the procedures being applied
13 to control access when entering or reentering a courthouse or a
14 city, county, city and county, or state building if entrances to the
15 courthouse or the city, county, city and county, or state building
16 have been posted with a statement providing reasonable notice
17 that prosecution may result from a trespass described in this
18 subdivision.

19 SEC. 2. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.